



BOARD OF VETERANS' APPEALS

FOR THE SECRETARY OF VETERANS AFFAIRS

IN THE APPEAL OF
CHRISTOPHER L. SCOTT

[REDACTED]
Docket No. 190627-10388

Represented by
Brian D. Hill, Attorney

DATE: March 16, 2020

ORDER

A rating in excess of 50 percent for posttraumatic stress disorder (PTSD) is denied.

FINDINGS OF FACT

1. The Veteran had active service from May to August 2000 and April 2003 to September 2004.
2. PTSD has been manifested by complaints of anxiety, depressed mood, and loss of focus; objective evidence includes normal thought and speech patterns, appropriate behavior and judgment, and the ability to attend school and obtain employment.

CONCLUSION OF LAW

The criteria for a rating in excess of 50 percent for PTSD have not been met. 38 U.S.C. §§ 1155, 5103(a), 5103A, 5107 (2012); 38 C.F.R. § 4.130, Diagnostic Code (DC) 9411 (2019).

REASONS AND BASES FOR FINDINGS AND CONCLUSION

On August 23, 2017, the President signed into law the Veterans Appeals Improvement and Modernization Act, Pub. L. No. 115-55 (to be codified as amended in scattered sections of 38 U.S.C.), 131 Stat. 1105 (2017), also known as the Appeals Modernization Act (AMA). This law creates a new framework for Veterans dissatisfied with VA's decision on their claim to seek review. This decision has been written consistent with the new AMA framework.

The Veteran selected the Higher-Level Review Lane when he opted into the AMA review system by submitting a Rapid Appeals Modernization Program (RAMP) election form in March 2018. Accordingly, the Regional Office (RO) denied the claim in February 2019 based on the evidence of record as of the date VA received the RAMP election form.

In July 2019, he filed a timely VA Form 10182 (Notice of Disagreement) and requested Direct Review by the Board. Based on his choice to pursue a direct review of his appeal, the Board will decide the appeal "based on the evidence of record at the time of the prior decision." Accordingly, no additionally submitted evidence may be considered.

Disability evaluations are determined by the application of a schedule of ratings which is based on average impairment of earning capacity. Generally, the degrees of disability specified are considered adequate to compensate for considerable loss of working time from exacerbations or illnesses proportionate to the severity of the several grades of disability. 38 C.F.R. § 4.1. Separate diagnostic codes identify the various disabilities. 38 U.S.C. § 1155; 38 C.F.R. Part 4.

All psychiatric disabilities are evaluated under a General Rating Formula for Mental Disorders ("General Rating Formula"). A 50 percent rating is warranted under the General Rating Formula for occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect, circumstantial, circumlocutory, or stereotyped speech, panic attacks occurring more than once a week, difficulty in understanding complex commands, impairment of short-term memory (i.e. retention of only highly learned material or forgetting to complete tasks), impaired judgment, impaired abstract thinking,

disturbances of motivation and mood, and difficulty in establishing effective work and social relationships.

A 70 percent rating is warranted under the General Rating Formula for occupational and social impairment with deficiencies in most areas such as work, school, family relations, judgment, or mood, due to such symptoms as: suicidal ideation, obsessional rituals which interfere with routine activities, speech intermittently illogical, obscure, or irrelevant, near continuous panic or depression affecting the ability to function independently, appropriately, and effectively, impaired impulse control (such as an unprovoked irritability with periods of violence), spatial disorientation, neglect of personal appearance and hygiene, difficulty in adapting to stressful circumstances (including work or a work-like setting), and an inability to establish and maintain effective relationships.

The symptoms listed under the rating criteria are meant to be examples of symptoms that would warrant the rating, but they are not meant to be exhaustive, and the Board need not find all or even some of the symptoms to award a specific rating. *Mauerhan v. Principi*, 16 Vet. App. 436 (2002).

If the evidence shows that a veteran experiences symptoms or effects that cause occupational or social impairment equivalent to what would be caused by the symptoms listed in the criteria for a particular rating, the appropriate equivalent rating will be assigned. Furthermore, the rating code requires not only the presence of certain symptoms but also that those symptoms have caused occupational and social impairment at a level consistent with the assigned rating. *Vazquez-Claudio v. Shinseki*, 713 F.3d 112 (Fed. Cir. 2013).

Turning to the medical evidence, in May 2014, clinical treatment notes show that the Veteran was hospitalized for suicidal thoughts and an incident where he intentionally cut his arm and face with broken glass. He was discharged and his suicide risk was assessed as low. A January 2015 VA examiner indicated occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks. The symptoms included depressed mood, anxiety, chronic sleep impairment, memory loss, and difficulty establishing and maintaining effective relationships.

A May 2017 VA examiner noted occupational and social impairment with reduced reliability and productivity. Symptomatology included depressed mood, anxiety, suspiciousness, chronic sleep problems, and difficulty establishing and maintaining effective relationships. The Veteran's mood was noted as anxious during the examination, but his speech was fluent and normal and thought process was linear.

Next, a November 2017 VA examiner found evidence of occupational and social impairment with reduced reliability and productivity. Further, she noted symptoms of depressed mood, anxiety, panic attacks occurring weekly or less, chronic sleep impairment, mild memory loss, disturbances of motivation and mood, and difficulty in establishing and maintaining effective relationships. The Veteran's thought process was noted as linear and he denied suicidal intent.

At the time of this examination, the Veteran reported being close to his family but having no close friends. He stated that he spent his time doing activities with his children. Further, he was enrolled in school and was working toward an associate degree, despite problems with anxiety and focus.

In addition, clinical records dated from 2015 to 2019 indicated an anxious mood, logical thought process and appropriate behavior and thought content. The treatment notes generally denied psychotic, manic, or delusional thinking. He was hospitalized in 2016 for suicidal ideation, but he reported that it was superficial cutting for self-harm and not a suicide attempt.

Based on the above, the disability picture is consistent with a 50 percent rating. The Veteran experiences depressed mood, anxiety, sleep disturbances, difficulty establishing and maintaining effective relationships. Further, he has shown suicidal ideation in the remote past but not impaired judgment, abstract thinking, incongruent thought and speech, or inappropriate behavior. He successfully attended school and maintains a good relationship with his family. He is able to function independently, and his impulse control and judgment are appropriate. As such, the medical evidence does not support a higher rating.

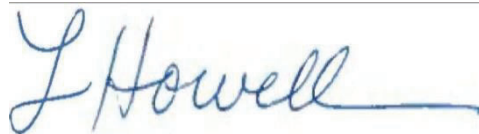
The Board has also considered the Veteran's lay statements that his disability is worse. While he is competent to report symptoms because this requires only personal knowledge as it comes to him through his senses, he is not competent to

identify a specific level of disability of this disorder according to the appropriate diagnostic codes.

Such competent evidence concerning the nature and extent of the Veteran's PTSD has been provided by the medical personnel who have examined him during the current appeal and who have rendered pertinent opinions in conjunction with the evaluations. The medical findings (as provided in the examination reports and other clinical evidence) directly address the criteria under which this disability is evaluated.

Moreover, as the examiners have the requisite medical expertise to render medical opinions regarding the degree of impairment caused by the disability and had sufficient facts and data on which to base the conclusions, the Board affords the medical opinions great probative value. As such, these records are more probative than the Veteran's subjective complaints of increased symptomatology. In sum, after a careful review of the evidence of record, the benefit of the doubt rule is not applicable and the appeal is denied.

Finally, the Veteran has not raised any other issues, nor have any other issues been reasonably raised by the record, for the Board's consideration. *See Doucette v. Shulkin*, 28 Vet. App. 366, 369-370 (2017) (confirming that the Board is not required to address issues unless they are specifically raised by the claimant or reasonably raised by the evidence of record).



L. HOWELL
Veterans Law Judge
Board of Veterans' Appeals

Attorney for the Board

T. Kokolas, Associate Counsel



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The Board's decision in this case is binding only with respect to the instant matter decided. This decision is not precedential and does not establish VA policies or interpretations of general applicability. 38 C.F.R. § 20.1303.

If you disagree with VA's decision

Choose one of the following review options to continue your case. If you aren't satisfied with that review, you can try another option. Submit your request before the indicated deadline in order to receive the maximum benefit if your case is granted.

Review option	Supplemental Claim Add new and relevant evidence	Higher-Level Review Not Available Ask for a new look from a senior reviewer	Board Appeal Not Available Appeal to a Veterans Law Judge	Court Appeal Appeal to Court of Appeals for Veterans Claims
Who and what	A reviewer will determine whether the new evidence changes the decision.	Because your appeal was decided by a Veterans Law Judge, you cannot request a Higher-Level Review.	You cannot request two Board Appeals in a row.	The U.S. Court of Appeals for Veterans Claims will review the Board's decision. You can hire an attorney to represent you, or you can represent yourself.
Estimated time for decision	 About 4-5 months	Please choose a different option for your next review.	Please choose a different option for your next review.	Find more information at the Court's website: uscourts.cavc.gov
Evidence	 You must submit evidence that VA didn't have before that supports your case.			
Discuss your case with VA				
Request this option	Submit VA Form 20-0995 Decision Review Request: Supplemental Claim VA.gov/decision-reviews			File a Notice of Appeal uscourts.cavc.gov Note: A Court Appeal must be filed with the Court, not with VA.
Deadline	You have 1 year from the date on your VA decision to submit VA Form 20-0995.			You have 120 days from date on your VA decision to file a Court Appeal.
How can I get help?	A Veterans Service Organization or VA-accredited attorney or agent can represent you or provide guidance. Contact your local VA office for assistance or visit VA.gov/decision-reviews/get-help . For more information, you can call the White House Hotline 1-855-948-2311 .			

What is new and relevant evidence?

In order to request a Supplemental Claim, you must add evidence that is both new and relevant. New evidence is information that VA did not have before the last decision. Relevant evidence is information that could prove or disprove something about your case.

VA cannot accept your Supplemental Claim without new and relevant evidence. In addition to submitting the evidence yourself, you can identify evidence, like medical records, that VA should obtain.

What is the Duty to Assist?

The Duty to Assist means VA must assist you in obtaining evidence, such as medical records, that is needed to support your case. VA's Duty to Assist applied during your initial claim, and it also applies if you request a Supplemental Claim.

If you request a Higher-Level Review or Board Appeal, the Duty to Assist does not apply. However, the reviewer or judge will look at whether VA met its Duty to Assist when it applied, and if not, have VA correct that error by obtaining records or scheduling a new exam. Your review may take longer if this is needed.

What if I want to file a Court Appeal, but I'm on active duty?

If you are unable to file a Notice of Appeal due to active military service, like a combat deployment, the Court of Appeals for Veterans Claims may grant additional time to file. The 120-day deadline would start or resume 90 days after you leave active duty. Please seek guidance from a qualified representative if this may apply to you.

What if I miss the deadline?

Submitting your request on time will ensure that you receive the maximum benefit if your case is granted. Please check the deadline for each review option and submit your request before that date.

If the deadline has passed, you can either:

- Add new and relevant evidence and request a Supplemental Claim. Because the deadline has passed, the effective date for benefits will generally be tied to the date VA receives the new request, not the date VA received your initial claim. Or,
- File a motion to the Board of Veterans' Appeals.

What if I want to get a copy of the evidence used in making this decision?

Call 1-800-827-1000 or write a letter stating what you would like to obtain to the address listed on this page.

Motions to the Board

Please consider the review options available to you if you disagree with the decision. In addition to those options, there are three types of motions that you can file with the Board to address errors in the decision. Please seek guidance from a qualified representative to assist you in understanding these motions.

Motion to Vacate

You can file a motion asking the Board to vacate, or set aside, all or part of the decision because of a procedural error. Examples include if you requested a hearing but did not receive one or if your decision incorrectly identified your representative. You will need to write a letter stating how you were denied due process of law. If you file this motion within 120 days of the date on your decision letter, you will have another 120 days from the date the Board decides the motion to appeal to the Court of Appeals for Veterans Claims.

Motion to Reconsider

You can file a motion asking the Board to reconsider all or part of the decision because of an obvious error of effect or law. An example is if the Board failed to recognize a recently established presumptive condition. You will need to write a letter stating specific errors the Board made. If the decision contained more than one issue, please identify the issue or issues you want reconsidered. If you file this motion within 120 days of the date on your decision letter, you will have another 120 days from the date the Board decides the motion to appeal to the Court of Appeals for Veterans Claims.

Motion for Revision of Decision based on Clear and Unmistakable Error

Your decision becomes final after 120 days. Under certain limited conditions, VA can revise a decision that has become final. You will need to send a letter to VA requesting that they revise the decision based on a Clear and Unmistakable Error (CUE). CUE is a specific and rare kind of error. To prove CUE, you must show that facts, known at the time, were not before the judge or that the judge incorrectly applied the law as it existed at the time. It must be undebatable that an error occurred and that this error changed the outcome of your case. Misinterpretation of the facts or a failure by VA to meet its Duty to Assist are not sufficient reasons to revise a decision. Please seek guidance from a qualified representative, as you can only request CUE once per decision.

Mail to:

Board of Veterans' Appeals
PO Box 27063
Washington, DC 20038

Or, fax:

1-844-678-8979